In the Supreme Court

of the United States

October Term, 1952

No. 213

M. C. SCHAEFER,

Petitioner,

vs.

SAM MACRI, DON MACRI, JOE MACRI, W. R. McKELVY and CONTINENTAL CASUALTY COMPANY, a Corporation,

Respondents.

BRIEF OF PETITIONER M. C. SCHAEFER IN REPLY TO BRIEF OF W. R. McKELVY AND CONTINENTAL CASUALTY COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT

The petitioner claims, and the record proves, that the Law Firm of Skeel, McKelvy, Henke, Evenson & Uhlmann is operating a ruthless, corrupt, and diabolic Lawyer Mill and is the greatest wrongdoer in the conspiracy charged by your Petitioner in the instant suit.

Petitioner charges: that W. R. McKelvy is one of the senior partners of the above law firm; that Continental Casualty Co., is one of the largest clients of this firm's office, and for which this law firm is general counsel in the State of Washington; that Clyde Philp was the Attorney-in-fact for Continental Casualty Co. (a very strategic position for finding out the amount of competitors' proposed bids), and at the same time a purported silent partner of Macri Construction Co., not only on the jobs herein involved but also on many other jobs that were undertaken by this combination, both before and after your Petitioner sub-contracted with them; that the purported Macri Construction Co., has specialized in public work, that they have done much work for the STATE HIGHWAY DEPARTMENT in the State of Washington, but are in fact unable to estimate such work, and are but pseudo-contractors and fronts for the McKelvy office and the Continental Casualty Co.; that Mr. Skeel Sr. of this law firm was a DIRECTOR OF SEVERAL LEADING FINANCIAL, industrial and shipping concerns and has served on the committee for economic development, HIGHWAY AND TRAFFIC STUDY GROUPS, the Community Chest, Rotary International and other organizations; that Tom W. Holman who had been associated in the McKelvy office for a number of years and who still co-operated as though he were still associated in that office was HEAD OF WASHINGTON HIGHWAY DEPARTMENT ADVISORY COMMITTEE, this is the same Tom W. Holman to whom W. R. McKelvy transferred their own stooge and client, the Macri Construction Co.,

on November 1, 1944, the day McKelvy undertook to represent your Petitioner against this, the Macri firm and the Continental Casualty Co. Note carefully, however, that McKelvy transferred to Holman only this one case, and McKelvy continued to represent Macri in other litigation then pending in Seattle and continued such representation for many months (See R. 516-518). This is the same Mr. Holman that managed the court room strategy for all defendants in Plaintiff's quantum-meruit suit in Yakima and who because of Judge Driver's previous association in the McKelvy office was able, after 2 weeks of hearings, to require Plaintiff to go to Boise, Idaho, a distance of approximately 400 miles to take a deposition and who was permitted to protract this Yakima suit for 4 solid 5-day weeks plus the Saturday of the deposition at Boise; that this man Mr. Tom W. Holman was acting as if he were yet in the McKelvy office and was in fact acting as the attorney for Continental Casualty Co., Holman knowing full well that the assets of the Macris and Philp and Goerig were made unavailable to your petitioner and that they would not be required to pay any judgment Continental Casualty Co. might be awarded against them, in event Petitioner would be awarded judgment against either of them or/and Continental Casualty Co.; that Judge Driver knows full well that the use cases of material men, and other sub-contractors were decided at pretrial in January of 1947 and that at the hearing on February 21, 1947, Willard E. Skeel of the above law firm was present to assist Tom W. Holman in making a proper record of the fraudulent concealment of the assets of the

Macris and Philp and Goerig; and that the statements by both Mr. Holman and Mr. Skeel regarding plaintiff not being present are true and that the exhibits referred to at that hearing are those of your Petitioner in the instant case; now adding the how, in which Judge Driver while hearing the instant case, cut in on McKelvy's attorney Mrs. Curry when he saw that she was admitting that McKelvy could be held liable in conspiracy (R. 290) "On 85, line 26, (this appears on lines 19 to 22, R. 172), we have another statement of conspiracy; except for one thing on page 46, the only way you could tie McKelvy in would be on line 5 and 6—" (this appears on last line of R. 115 and first 2 lines of R. 116); here Judge Driver cut in swiftly and changed the subject; "The Court: What is this action for, damages?" Line 5 and 6 on page 46 reads "judgment in the trial court in favor of Plaintiff and against the Defendants of Plaintiff's suit for Quantum Meruit, and", and this she would have perhaps coupled with the fact that in the memorandum, which McKelvy inadvertently handed me on October 20, 1945, in which he states that plaintiff had a cause in quantum meruit; then Judge Driver adds verification to your Petitioner's statement that this law firm is operating a lawyer mill. Petitioner quote, "The Court: Before that it was Skeel and Whitney; I worked there for six months in 1916. Scarcely any member of the bar in the State of Washington hasn't at one time or another. I worked in Skeel and Whitney's office from June to December, 1916, the year I graduated from law school." Your Petitioner further charges this law firm, because of the great va-

riety of financial and political interests, the great number of attorneys they have turned out of their lawyer mill, the great financial, insurance and other interests they represent, do control the local bar association and the Judges; and if that is not enough as in the instant case they turn to threats and intimidation and to having the Court Reporters falsify the records and delay in getting out the transcripts of records; the records, briefs and other papers in this case are replete with half truths, evasions, misstatements, misquotations and outright diabolic falsehoods on the part of the attorneys and their clients, the respondents in this case.

Petitioner further claims that this firm of shyster attorneys, by operating such a lawyer mill, have a license to do anything and are completely immune to all liability from whatever source, except as in the instant case, when because of the above set-up a layman is unable to get an attorney to represent him, he undertakes to prosecute his own lawsuit.

Now in the instant case, this plaintiff, in trying to get justice against this firm of attorneys and their clients first found that he was not able to get an attorney to represent him, next he found that the judges are controlled, they are controlled in the first place perhaps because they get their appointment or the great influence for such appointment from the bar association which is dominated by the McKelvy office, or in combination with other shysters that have had too close a connection with said McKelvy office, and/or that these judges have themselves worked in and are products of this said office; then these local attorneys and judges

dupe around so as to have four controlled judges hold with this, the McKelvy office, and thereby, and with that influence to start with, then invite the circuit court judges to a luncheon of the bar association for the final coup and of course this hearing had to fall on the exact date of such luncheon and in the middle of plaintiff's argument.

ANSWERING RESPONDENT McKELVY'S BRIEF

Answering *Statement*, pages 1 and 2. First of all let me make it very clear that your Petitioner claims no immunity, but what your Petitioner does desire is a chance to have this case go to jury trial as requested in his demand for jury trial filed in the instant case and stop this trickery of throwing him out of court without a trial on the merits, that this Court appoint a judge to hear this case on its merits and that after this civil case is decided, that this Court turn this information over to a congressional crime commission or the Justice Department in Washington, D. C., for further action.

Answering *The Record*, pages 2 and 3 of McKelvy Brief. First answering paragraph 1. This is controverted. Please read the Statement of this reply brief and the Petition for Writ of Certiorari and Brief in Support of Petition. Answering paragraph 2. This is a falsehood. I call it one because, as an attorney this respondent knows full well, the Supreme Court Rule 38, 1 and 7, provides for supplying the records of all proceedings in the Circuit Court of Appeals, and further, your Petitioner called the Clerk of the Circuit Court of Appeals at San Francisco, California, Mr. Paul P. O'Brien, on June 25, 1952, and this clerk said that all briefs, the transcript of hearing before the Circuit Court of Appeals, and any other papers filed subsequently to the printing of the record should be added as an appendix to Petitioner's petition for certiorari and brief to be filed

in the Supreme Court. Answering paragraph 3. This is a deliberate distortion. The Circuit Court of Appeals' language is correctly quoted, but Judge Lemmon made no such finding (R. 215ff); Judge Driver did not (R. 279ff), and neither did Judge Lindberg (R. 555ff and 637ff and R. 532). The transcript of the hearings before Judge Lindberg was deliberately falsified by the Reporter. See full statement of the correct facts on pages 9 to 15 of Petition for Writ of Certiorari with supporting brief.

Answering *Members of the District Appellate Court,* paragraph 1 on pages 3, 4 and 5. Please read Statement of this brief, then Petitioner's Petition for Writ of Certiorari and Brief in Support of Petition; then please read all of the hearing before Judge Bowen (R. 15-36) and particularly (R. 30 to incl. 34) and not only the pages of the record (R. 31-32) as suggested by respondent.

As to Judge Lemmon, please read Statement of this brief, then Petitioner's Petition for Writ of Certiorari and Brief in Support of Petition; then please read all of the hearing before Judge Lemmon (R. 215-262) and not only the pages suggested by the respondent.

As to Judge Driver, please read Statement of this brief; then Petitioner's Petition for Writ of Certiorari and Brief in Support of Petition; then please read all of the hearing before Judge Driver (R. 279-360) in the instant case; and then read this same Judge Driver's opinion in the Quantum Meruit suit in Yakima (R. 438-460). Then please read the photostatic copies of an office memo which respondent McKelvy inadvertently handed

your Petitioner on October 20, 1945 and see that it states the remedy to be quantum meruit recovery (R. 407-410).

As to Judge Lindberg, please read Statement of this brief; then Petitioner's Petition for Writ of Certiorari and Brief in Support of Petition; then please read all of the hearings before Judge Lindberg—the hearing on July 2, 1951 (R. 503-511); the hearing on July 9, 1951 (R. 512-516); the hearing on August 6, 1951 (R. 555-636); the hearing on August 7, 1951 (R. 637-643); on page 5, lines 23 and 24, this is a deliberate falsehood and known to be such. Please read pages 12, 13, 14, and the first paragraph on page 15; the last word on line 2, and the next 4 lines of page 17 of Petition for Writ of Certiorari and Brief in Support of Petition, and pages 71, 72 and 73 of the Appendix thereof; and page 106, Appendix to Petition for Writ of Certiorari.

As to the Circuit Court of Appeals Judges, please read Statement of this brief; then Petitioner's Petition for Certiorari and Brief in Support of Petition; then please read Petitioner's brief and reply brief in the Circuit Court of Appeals, pages 25 to 60, and including the graph attached to the back of page 60; the hearing on April 9, 1952 (pages 60-105); the affidavit regarding the dereliction of the court reporter at this hearing, pages 106-113; then please read R. 631-634.

Answering *Reporters and Counsel,* page 7. First let me say that this is a gross misstatement of facts. Please read Statement of this brief; then please read page 12 to and including the first 6 lines of page 17 of Petition-

er's Petition for Writ of Certiorari and Brief in Support of Petition, and please read all of the references therein given.

Answering *Misstatements of Complaint,* par. 1 on page 7. There is falsehood involved in this paragraph as the respondent McKelvy and his attorney well know that the statement referred to in R. 374 only sets forth what McKelvy told your Petitioner at that time, and neither the complaint, nor your Petitioner recognize Holman as having been the attorney for the Macris, but does claim that McKelvy was at that very moment the attorney for the Macris as alleged in Statement of this brief; line 12 to and incl. 19 on page R. 377; the last par. on page 621 to 1st par. on page 623 of the record; and R. 516-518.

As to *Willard E. Skeel,* please read the above and all references therein cited; then read Statement of this brief; then read R. 415-428.

ANSWERING THE BRIEF OF CONTINENTAL CASUALTY COMPANY

All the remarks made above are by this reference made applicable to Continental's brief. In addition, however, as to Continental I suggest you read all of Judge Driver's opinion (R. 438ff) from which you will see that Judge Driver's opinion was very clear cut in Petitioner's favor. Principally, however, Petitioner's position on Continental's conduct of the Yakima litigation, and appeals in connection therewith is that it was a malicious abuse of the judicial processes and done in furtherance of the conspiracy.

It is interesting to note that Continental and McKelvy both completely evade the real issues, thereby admitting my contentions to be true.

It is further interesting to note that Continental and their attorneys, even before this highest Court in the land, wilfully persist in intentionally misrepresenting and misstating: to-wit, see page 21 of their brief, second full paragraph where they say, "The Second Amended Complaint shows that Petitioner recovered *damages* * * *" (citing R. 380). The citation is to my complaint and actually reads, " * * * and finally resulted in a judgment in favor of Plaintiff and against the defendants Macri, Philp & Goerig, and Continental Casualty Company, for what the trial court thought was the *reasonable value of the services rendered* * * *" (Italics supplied).

Also, on page 18 of their brief they state the law of Oregon on malicious prosecution to include certain elements and cite a case. Neither that case nor any Oregon case that can be found decided by the Oregon Supreme Court involving Oregon law, so holds.

Even should the Oregon Court so hold, it does not get around the fact that this suit was malicious in fact that was part of the conspiracy.

There is not one statement by the opposition that refutes a single statement by your Petitioner. All my allegations are circumscribed by my prayer, Mentor Christ teach these men lawfter.

Time does not permit exhaustive reply to the briefs of Continental and McKelvy as I want this printed and filed by September 10, so as to get on this October term.

Wherefore your Petitioner again respectfully requests that the Prayer of his Petition be granted.

M. C. SCHAEFER,
Petitioner, Per Se.